

CALIFORNIA ENERGY COMMISSION
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June 14, 2005

Responses to Little Hoover Commission Questions

Q 1. Representation before the Federal Energy Regulatory Commission (FERC). The reorganization plan submitted to the Commission states that the Office of Energy Market Oversight (OEMO) within the Department of Energy “will, among other things, exclusively represent ratepayer interests before FERC.” Numerous state entities now represent the State before the FERC, including the Attorney General and the California Public Utilities Commission (PUC).

Would the plan preclude the Attorney General, the PUC, the California Energy Commission (CEC), the California Independent System Operator and any other entities that are not under the Governor’s direct jurisdiction from representing the State before the FERC, on ratepayer or other issues, without prior authorization from the administration?

Would the plan prohibit other entities, such as the State Water Resources Control Board or the Department of Fish and Game, from representing the State before the FERC on issues that are not related to energy and for which the OEMO might not have subject matter expertise?

A. Nothing in the plan precludes other agencies from participating in matters before the FERC, including the ability of the Attorney General and the CPUC to act independently. The plan does not limit other agencies from speaking on matters within their responsibility and expertise such as the environment and water. The Department of Energy will be the agency responsible for articulating the energy policy of the Administration in federal proceedings.

Q 2. Authority of the Senate to fill vacancies. The draft statutory language strikes the ability of the Senate to appoint commissioners to vacancies on the CEC. Please clarify whether the reorganization plan would retain the authority of the Senate to appoint commissioners to fill such vacancies.

A. This change is not an element of the plan. The statutory language will retain this provision of current law.

Q 3. Designee appointments at the Energy Commission. The draft statutory language indicates that the Secretary of the Department of Energy will appoint a designee to chair the CEC when the Secretary has a conflict. Concerns were raised that a designee appointed by the Secretary could not function

independently and thus not adequately avoid conflicts. Please clarify the intent of the provision and what standards are in place to ensure that conflicts would be avoided.

A. While it is the intent of the plan to allow for a designee to hear a matter before the CEC in place of the Secretary, this is not intended to raise the concern described above. The statutory language has been clarified to eliminate the language that caused the concern and to ensure that both the Secretary and any designee will be free of conflicts if a designee is hearing a matter.

Q 4. Role of the PUC in transmission certification. The plan submitted to the Commission transfers from the PUC to the CEC the “permitting functions for transmission lines connected to the interconnected transmission system, as well as for permit functions for natural gas storage and infrastructure.” However, the statutory language does not eliminate the certification of public convenience and necessity function of the PUC. And in your testimony you indicated that not all regulatory functions of the PUC would be transferred. Please clarify under the proposal which functions associated with the generation and transmission of electricity and the production and distribution of natural gas would be performed by the PUC and the CEC. It would be most helpful if you could contrast how those functions are currently distributed and how they will be distributed under the proposal.

A. The plan intends for there to be only one certificate of public convenience and necessity for any utility facility. This certificate will be issued by the CPUC for licensing jurisdiction that remains with them under the plan and will be issued by the CEC for facilities over which licensing jurisdiction is moved under the plan. The attached matrix (Appendix A) breaks down the decision-making authority that now exists with respect to the generation and transmission of electricity and the production and distribution of natural gas and shows how that authority would be distributed under the proposal.

In general, the CPUC would retain the CPCN authority for utility-owned electric generation, distribution (to the extent that they require a Certificate of Public Convenience and Necessity (CPCN) for such facilities now) and those natural gas facilities for which jurisdiction remains at the CPUC. The CPCN authority for electric transmission and the gas facilities for which jurisdiction is being transferred would move to the CEC under the Department of Energy.

Q 5. Organizational structure. The organizational chart presented in the plan provided to the Commission is not reflected in the statutory language. Please clarify how the organization of the new Department of Energy will be determined, whether through the budget process or through statute.

A. The budget process will be used as it is now to provide resources to identified programs. The Secretary will have the ability, consistent with the powers of department heads under the Government Code, to organize the Department into logical divisions and offices. Such organizing will be done in conformance with many applicable standards, such as the requirement for strategic plan adoption and any necessary approvals by the SPB and DPA. The organizational chart provided in the narrative was not intended to be reflected in statutory language because it may need to change,

subject to the understanding that there are restrictions that are defined by the statutory language (e.g. CEC and OEMO will remain as shown on the chart because their functions are provided by statute).

Q 6. Procedural changes at the Energy Commission. Please define the specific functions of the CEC that would move to the Department of Energy. Please describe how public procedures and decisions regarding those functions would be altered if transferred to the Department of Energy, including which decisions currently made by the CEC would be made by the secretary.

A. In general, the new CEC will make all facility licensing decisions and will adopt regulations governing building and appliance efficiency standards under the Administrative Procedure Act (APA). Decisions of the Commission cannot be overridden by the Secretary.

Q 7. Office of Energy Market Oversight. Please define the specific oversight functions of the Electricity Oversight Board as currently designed and the proposed oversight functions of the OEMO. Please also describe and document how the proposal would create an appropriate firewall between the oversight efforts of the OEMO, which reports to the secretary, and the other responsibilities of the secretary which may pose a conflict, including the authority to participate in energy markets.

A. The Electricity Oversight Board currently has oversight authority over the operation of the California Independent System Operator Corporation (CAISO), the operation of the electric transmission grid, and the operation of energy markets that affect electric service to Californians. The last category includes the trading of electric energy, trading of hedging instruments concerning electric energy, buying and selling transmission capacity and transmission hedges, and trading natural gas and gas transportation because gas markets significantly affect electric markets and electricity contracts. Each of these oversight functions involves the collection of significant amounts of proprietary market data from market participants and the CAISO. This confidential information must not be shared with anyone who could use it in connection with a “market interest” or generally with anyone who carries out a function that could be considered a market interest. The EOB has rules in place that prohibit such information flow today. At present, the EOB reports to the Governor, as do state officers who perform roles that would make them market interested, such as the Department of Water Resources, a few programs of the Energy Commission, the CPUC procurement process, and the Power Authority when it was functioning. The fact that these other entities also report to the Governor does not prohibit the EOB from reporting to the Governor. It prohibits the EOB from sharing proprietary data. The EOB can share its conclusions and general analysis based on that data.

Under the reorganized structure, the Office of Energy Market Oversight (OMEEO) would carry out the same oversight roles and collect the same proprietary data. The plan and the implementing statutory language call for the OMEEO to be a discreet office with sufficient separation from other programs in the DOE. The statute also clearly provides for the OMEEO to adopt rules necessary to compartmentalize any proprietary data. The OMEEO will be separate from any market interest at a program level. With respect to the fact that both the OMEEO and the other parts of the DOE will report to the Secretary, this

is analogous to the circumstance that exists today with the several energy agencies, including the EOB, reporting to the Governor. Specific data that under protective orders and rules must remain within the EOB today will remain within the OEMO in the new structure. Conclusions and non-proprietary analysis will be shared with policymakers as it is today.

Q 8. Independence of the Energy Commission. A number of witnesses, including policy-makers, asked whether changes to the Energy Commission would reduce the independence of this plural body and thus diminish the value of its contributions on energy policy. Please outline what provisions would be in place to ensure the independence of the Commission's decisions and contrast those provisions with the current structure and operation of the Commission.

A. Under the plan, the Energy Commission remains a plural body, with public members appointed by the Governor and confirmed by the Senate. Members serve staggered terms and must fulfill the qualifications applicable to current Commissioners. The Secretary is also appointed by the Governor and confirmed by the Senate. However, the Secretary serves at the pleasure of the Governor and is held directly accountable for the performance of the Department.

Under the plan, decisions made by the Commission cannot be overruled by the Secretary, who is one of five voting members.

Q 9. Will Other Departments not mentioned in the proposal, such as Division of Oil, Gas and Geothermal not be part of the reorganization proposal?

A. This is correct. The Division of Oil, Gas and Geothermal are not part of the reorganization. The distinction is between energy generation and raw resources. The plan does not address gas exploration or permits for oil drilling. The plan does not address coal mining or transport of coal by rail, or any of the other existing regulations around this issue. The plan does not change any of the processes around the issuance of Certificate of Public Convenience and Necessity (CPCN) or any of the rules or regulations. All those laws remain identical.

Q 10. Why does the reorganization not include the California Public Utilities Commission?

A. The reorganization does include the CPUC. The proposal moves functions from the CPUC.

Q 11. Under the new Division of Program Management, why wouldn't the reorganization proposal move some or all the CPUC's energy efficiency Public Goods Program oversight management to the Energy Commission?

A. Moving the CPUC's energy efficiency Public Goods program can be discussed in the future and there are a number of tools available that could be used to incorporate the programs. This issue needs additional public discussion, something that is difficult to do within this process of reorganization.

Q 12. Will there continue to be public participation in terms of policy setting?

A. Yes. The Department of Energy has the same procedures available to it to allow public participation as are available to the agencies from which programs are being transferred. These include public hearings and technical workshops as well as public comment periods. The reorganization does not propose to significantly modify the practices used to develop energy policies. Any opportunities for public comment that are currently reflected in law or regulation are retained with respect to those programs.

Q 13. Will intervenors in transmission siting cases still be eligible for intervenor compensation?

A. The Plan does not transfer the intervenor compensation process. The Energy Commission has a process for assisting the public's participation in proceedings before the Energy Commission through the Public Advisor's Office. The role and function of the Public Advisor is retained under the Department of Energy.

Q 14. Will the new Department of Energy retain some of the goals that have been adopted by the energy agencies?

A. Yes. The reorganization proposal maintains the current public policy goals that the Governor and the Energy Commission have previously stated.

The Governor will soon be releasing a very detailed document, which effectively responds to what the Energy Commission has already adopted in the area of energy in the form of the Commission's IEPR. That document is not being modified or changed through this proposal. The state and the Governor remain committed to the Energy Action Plan, which prioritizes first energy efficiency, demand response, and then renewables. So there's no change to what has already been established as the state's energy policies.

Q 15. On the organization chart shown in the narrative submitted to Little Hoover Commission, why isn't there a line showing the Energy Commission's relationship to the Division of Permitting, Siting and Standards?

A. The Division of Permitting, Siting and Standards is where the work of the Energy Commission is supported, much like the organizational structure of the Transportation Commission, supported by staff in the Business, Transportation and Housing Agency. The Energy Commission will continue the process of establishing evidentiary records for siting and permitting with support from the hearing officers.

Q 16. Does the Energy Commission make decisions on permitting, siting and standards?

A. Yes. Maintaining a plural body for these decisions was a consistent theme in the responses to the California Performance Review report. The plan reflects that comment.

Q 17. Where is the Renewables Program in this proposal?

A. The Renewables Program is maintained within the Division of Program Management. There is no modification or change to the program structure. Staff will continue to administer the transferred programs under the general policy direction of the Secretary - whether for efficiency, loans, grants, renewables, transportation, fuels, any of the program management activities that fall within the Division of Program Management.

Q 18. What is the role of the new department in terms of data dissemination, energy analysis and forecasting? Would these roles be expanded, contracted, or kept the same?

A. One thing we learned in developing the Summer 2005 forecast and reliability adequacy assessment is the need to move away from traditional forecasting methodologies to more complex risk management based approaches. These would consider probability analysis, confidence levels and feedback loops. Such a change would move the organization beyond integrated resource planning to something along the line of dynamic resource planning. The objective is to strengthen the analytical skills and methodologies, as well as to make them more transparent.

Q 19. How does the proposed reorganization enhance - or not enhance – authority over various energy decisions vis-à-vis federal government authority?

A. Nothing in the proposal changes federal law, having a Department of Energy speaking with a single voice, accountable to the Governor, the Legislature and the public will improve the effectiveness and influence of California's policies on federal energy policy. A Secretary of Energy can more effectively represent the interests of California before federal and other state governmental bodies.

Q 20. How does the energy reorganization address transportation issues?

A. The Department of Energy will have a broad mandate that includes forecasting future demand for transportation fuels as well as assuring security of the supply and distribution for gasoline, diesel and jet fuel. The Department of Energy will also evaluate the environmental and economic implications of advanced transportation technologies and alternative fuels, and shifts in transportation modes. In consultation with all appropriate agencies through the IEPR process, the Department will make recommendations to the Governor and Legislature to improve the efficiency of transportation energy use, reduce dependence on petroleum fuels, decrease environmental impacts from transportation energy use, reduce congestion, promote economic development, and enhance energy diversity and security. Interagency cooperation for contingency planning, emergency response protocols, and joint planning and research and development activities will continue with the Business Transportation and Housing Agency, the Office of Emergency Services, the CalEPA and the Department of Food and Agriculture.

Q 21. What are the benefits of having a Secretary involved in licensing cases or regulatory proceedings?

A. As the State's chief Energy Policy Advisor, the Secretary should fully participate in the public processes and proceedings of the Department and the Commission. Direct engagement will ensure that the public can communicate its views and suggestions to the Secretary on the full range of energy issues. In addition, it provides the Secretary a first-hand view of staff performance. The structure serves to illuminate opportunities to improve work flow and efficiency of the Commission.

This structure exists in State government today. The Secretary of State and Consumer Services serves as a member of the Building Standards Commission. The Secretary of Resources serves on the California Coastal Commission. The Director of the Department of Finance serves as a voting member on a multitude of Boards and Commissions.

Q 22. Why should we put an energy reorganization in place before the Governor has issued his energy policy

A. The purpose of the plan is to consolidate several statutory energy functions that exist today into a single Department directed by a cabinet level secretary. This consolidation will create an organizational framework that will be better able to execute existing statutory energy policies and develop integrated energy policies for the state's future. The Governor has outlined several energy policies in public statements and policy documents released by state energy agencies.

Q 23. It is important that ORA will have an active role in any new reorganization. How will the Office of Ratepayer Advocates (ORA) participate in the Commission's energy proceedings?

The ORA carries out an important role on behalf on retail consumers in retail rate-related proceedings. The ORA can and does participate in the Energy Commission's proceedings today. This reorganization does not affect the ORA or any of its responsibilities.

Q 24. Is there a conflict with CERS being transferred to the new energy department?

A. There is no conflict.

Some of CERS long-term contracts are tied to the construction of new power plants that have gone through, or are scheduled to go through, the California Energy Commission's siting process. The standards applied to the permitting and siting of power plants will be no different than for any other party seeking a permit.

Market oversight functions are statutorily separate under the reorganization plan and in existing law.

The reorganization plan does not affect the security of the DWR energy bonds. The Department of Energy takes the place of DWR with respect to all legal rights (including property rights) that support the payment of the bonds. The statute provides the DOE exactly the same authority; revenues will continue to be pledged in exactly the same way; the Rate Agreement will continue to be in full force and effect and will still be irrevocable in respect of the Bond Charge; and the material contracts (including power contracts) will all transfer to DOE without termination or risk of termination payment.

Q 25. What processes and procedures will be utilized for those programs which are transferred to the Department of Energy from the California Energy Commission?

A. The reorganization will transfer many programs of the Energy Commission to a new Department of Energy, and all of the staff. Many of these programs require public hearings and opportunities for input from interested organizations and individuals. These statutory and regulatory provisions will remain in place, and the Department will continue to administer these programs using the same processes (and staff) as is now the case and practice at the Energy Commission.

Currently, the staff that administers these programs conducts workshops, public meetings and related activities at appropriate points in the process of running these programs or preparing analytic reports. The Energy Commission has adopted regulations providing for public participation in decision making. As a practical matter, much of the day to day work that must be done to conduct the workshops, provide for public participation, frame the issues for decision and propose a recommended course of action is performed by the staff, with nominal involvement of the individual commissioners. Thus, the only appreciable change is that the Secretary, rather than the Energy Commission or one of its commissioners, is the person approving the final action.

Of course, the newly minted Energy Commission members would, as a plural body, make all final and binding decisions with respect to energy facility siting, transmission siting, appliance standards, building standards, and the like.

Q 26. Why aren't all demand-response, energy-efficiency, and renewable energy programs that are concurrently administered by both the CEC and the CPUC consolidated into the Department of Energy?

A. The GRP was intended to create an effective and accountable structure in the Executive Branch that could carry out all of the major elements of an energy policy except retail regulation, which remains at the CPUC. The GRP as drafted gives the Department sufficient tools with which to advance the State's goals in each area mentioned above. The programs that reside under the CPUC were not moved in this plan because it was not clearly necessary to do so at this time to achieve an effective Department of Energy. Whether a later consolidation of these programs could produce improved efficiency or value is an appropriate question for consideration.

Q 27. The proposed revision to Section 25200 (d) states that the Department shall be responsible for the planning, development, and implementation of all major aspects of state energy policy. This presumably is to centralize authority under the Department. But other state agencies, such as the California Public Utilities Commission (CPUC) and the California Energy Commission, (CEC) have energy responsibilities as well, which are established in statute and, with regard to the CPUC, in the Constitution. This raises the question of the relationship between the Department and these entities.

A. Today, and if the reorganization is adopted, the Governor approves an energy policy for the State. This plan moves many functions to a Department structure that will more cohesively coordinate its actions with the adopted policies. It keeps some functions, particularly ratemaking, in the CPUC. The Department would expect to collaborate with the CPUC and attempt to reach agreement in most instances. Having the position of Secretary of Energy will be useful to allow a central point of communication with respect to issues under the purview of the Department.

By statute, the Energy Commission prepares a biennial Integrated Energy Policy Report. This report is developed with stakeholder input through public workshops. These workshops include direct participation from all relevant and interested state agencies, including the CPUC. This process will continue at the Department.

Q 28. How are disagreements between the Department and the CEC to be resolved?

There should not be disagreements between the Department and the CEC. The CEC is a body within the Department that has the sole authority to hear and decide certain matters. On those matters, the decision of the CEC is conclusive. There are other matters that will be administered within the Department or for which the policy will be developed in the Department.

Q 29. Can the Secretary of Energy/Chair of the CEC override a decision by the CEC Commissioners to approve or disapprove of a power plant siting application?

A. Under the Plan, the Energy Commission is the plural body that adopts a decision on the proposed certification of an energy facility, and on proposals for building and appliance standards, and the like. These are final determinations and cannot be altered by the Secretary, who is but one of 5 voting members of the Commission.

If the Energy Commission, as a body, expressed an opinion on another matter, it would be in the nature of a recommendation and would of course not be binding on the Secretary or the Department.

Q 30. The plan requires the Secretary to "fix the salaries of" the appointees. Would these salaries be fixed within the parameters of the DPA salary determination structure or "fixed" in a manner outside the Administrative parameters similar to the California Power Authority?

A. These salaries will be fixed within the normal DPA process.

Q 31. The proposal apparently changes the standard for judicial review for transmission projects. Was this intentional? If so, what is the rationale for that change?

A. The proposal intends that the approval of major energy projects would be subject to generally to the same standards whether they are generation or transmission or pipeline projects. The proposal would make the appellate review for certification decisions transferred to the Energy Commission the same as it now is for certification of a Power Plant.

Q 32. By how much will this plan decrease costs to ratepayers and in what timeframe?

The immediate goal of this plan is to improve effectiveness and accountability. This should decrease ratepayer costs over time. One objective of this plan is to implement infrastructure development policies that better reflect the Statewide interests and regional needs. Currently, ratepayers pay several hundred million dollars per year (net of the projected cost of added infrastructure) due to infrastructure constraints. In addition, permitting decisions have not followed particularly good risk management principles, subjecting ratepayers to the possibility of at least temporary cost spikes. While quantification is difficult, this proposal should produce ratepayer benefits within five years.

Appendix A

Function	Current Authority	Reorg. Authority	Change Y/N
Electric transmission facilities within the interconnected grid that are built by investor-owned utilities and operated by the CAISO			
➤ Need determination	CPUC	Energy Commission	Y
➤ Land use approval	CPUC	Energy Commission	Y
➤ Cost recovery rate approval	FERC (binds states under filed rate doctrine)	FERC (binds states under filed rate doctrine)	N
➤ Allocation of costs to customer classes	CPUC	CPUC	N
Electric distribution facilities			
➤ Need determination	CPUC	CPUC	N
➤ Land use approval	CPUC	CPUC	N
➤ Cost recovery rate approval	CPUC	CPUC	N
➤ Allocation of costs to customer classes	CPUC	CPUC	N
Electric generation facilities			
➤ Need determination	CPUC for IOU rate-based facilities; none for market based facilities and municipal utility projects	CPUC for IOU rate-based facilities; none for market based facilities and municipal utility projects	N
➤ Land use approvals	Energy Commission for thermal facilities 50 MW and greater; local governments for smaller facilities	Energy Commission for thermal facilities 50 MW and greater; local governments for smaller facilities	N
➤ Cost recovery	CPUC for IOU rate-	CPUC for IOU rate-	N

rate approval	based facilities; CPUC in procurement proceeding for market based facilities; municipal utility boards for their own projects	based facilities; CPUC in procurement proceeding for market based facilities; municipal utility boards for their own projects	
➤ Allocation of costs to customer classes	CPUC and municipal boards	CPUC and municipal boards	N
Natural Gas Interstate Pipelines			
➤ Need determination	FERC	FERC	N
➤ Land use approval	FERC	FERC	N
➤ Cost recovery rate approval	FERC (binds states under filed rate doctrine)	FERC (binds states under filed rate doctrine)	N
➤ Allocation of costs to customer classes	CPUC	CPUC	N
Natural Gas Intra-state (Hinshaw) Pipelines and Gas Storage Facilities			
➤ Need determination	CPUC	CPUC	N
➤ Land use approval	CPUC	CPUC	N
➤ Cost recovery rate approval	CPUC	CPUC	N
Allocation of costs to customer classes	CPUC	CPUC	N
Non-utility Natural Gas Intra-state Pipelines and Gas Storage Facilities			
➤ Need determination	CPUC	Energy Commission	Y
➤ Land use approval	CPUC	Energy Commission	Y

Liquefied Natural Gas Terminals and Re-gasification Facilities			
➤ Interstate LNG facility	FERC	FERC	N
➤ Intrastate LNG facility	FERC – CPUC	FERC – CPUC	N
➤ Cost recovery rate approval	FERC – CPUC	FERC – CPUC	N
➤ Allocation of costs to customer classes	CPUC	CPUC	N